

**Application Ser. No. 10/724,870
Response and Amendment dated June 28, 2010**

REMARKS

35 USC § 103(a) Rejection of Claims 1 – 15 and 32

The Office Action rejected Claims 1 – 15 and 32 under 35 USC 103(a) as being unpatentable over Schnitzer (5,692,497) [Schnitzer ‘497] in view of Derrick (5,046,491) [Derrick ‘491], and further in view of Allen (6,142,950) [Allen ‘950].

Applicant has amended Claims 1 and 32 to more clearly claim the disclosed respiratory monitoring system. The combination of Schnitzer ‘497, Derrick ‘491 and Allen ‘950 does not disclose “each and every” feature of amended Claim 1.

Claim 1 has been amended to state when the “visual display alerts the user of a potential problem”, the “electronic controller automatically gathers an additional measured respiratory parameter regarding an aspect of the respiratory condition of the patient”.

Schnitzer ‘497 does not disclose the gathering of “an additional measured respiratory parameter” upon alerting by the visual display. It only discloses continuous recording of calculated values without any change after a visual display alert.

Additionally, Claim 1 states that the “aspect of the respiratory condition of the patient” is a “measured respiratory parameter”. Schnitzer ‘497, as stated by the Examiner, only discloses calculated values.

“CPU 130 can perform operator-specific physiological calculations on-line and in real-time, such as the calculation of V_d/V_t, CO₂ production and O₂ consumption.”

These calculations are manipulation of previously gathered data (or in real-time, currently gathered data regarding the same aspect of the respiratory condition).

Derrick ‘491 and Allen ‘950 do not disclose the missing features in Schnitzer ‘497. Therefore the references of Schnitzer ‘497, Derrick ‘491 and Allen ‘950 do not singly or in combination disclose “each and every” feature of Claim 1.

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The Examiner is requested to withdraw the combination of Schnitzer '497 in view of Derrick '491, and further in view of Allen '950 as 103(a) references since they do not individually or in combination disclose the claimed respiratory monitoring system. In light of the foregoing arguments and amendments to the claims, the Examiner is respectfully requested to allow Claims 1 – 15 and 32.

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CONCLUSION

Claims 1 – 15 and 32 are Pending. Claims 1, 8 and 32 are Currently amended. Claims 2 – 7, 9 – 12 and 14 are Original. Claims 13 and 15 are Previously presented. Claims 16 - 31 are Canceled.

In view of the foregoing, Applicants respectfully request reconsideration and timely allowance of the pending claims. Additionally should the Examiner feel that there are any issues outstanding after consideration of this response; the Examiner is invited to contact Applicants' undersigned representative to expedite prosecution.

No fees are believed due with the filing of the response; however, if there are any fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-1349. If a fee is required for an extension of time under 37 C.F.R. § 1.136 that is not accounted for in the enclosed transmittal, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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Dated: June 28, 2010

By: _____ /KOH/ _____

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